

Amendment Under 37 C.F.R. § 1.111
USSN 09/802,832
Attorney Docket Q63527
March 5, 2004

REMARKS

Claims 1-6 are all the claims pending in the application.

In the last Office Action Claims 1-6 inclusive were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 1, 4 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Francia (US 6,279,457) in view of Kalina (US 4,743,451). Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Francia in view of Kalina and further in view of Applicant's admissions on page 5 of the present application. Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Francia in view of Kalina and further in view of Leedham et al. (US 4,652,451). Claim 3 was indicated as being allowable over the prior art. Claims 7 and 8 were withdrawn from further consideration.

Claims 1 and 3 have been amended to overcome the noted indefiniteness.

Reconsideration and allowance of the application are respectfully requested in view of the following remarks.

The basic idea underlying the present invention is to provide a fermentation vat which has selective valve means allowing the feed of oxygenated must into the upper vat or into the lower vat or into both where the must is oxygenated by injector means associated with an uplift pipe which is provided with selective valve means downstream of the injector means. As explained in detail on pages 7 and 8 of the present application, the above mentioned features make it possible to achieve a substantial improvement in the quality of the must.

With respect to the rejection of Claims 1, 4 and 5 it is submitted that the combination of Francia and Kalina does not actually lead to an apparatus which has selective valve means

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capable of feeding the recycled and oxygenated must into the upper vat or the lower main vat.

The Examiner admits that neither Francia or Kalina teaches whether oxygen is injected before or after a control valve but maintains that the reversal or rearrangement of parts is *prima facia* obvious. Such a conclusion is unsupportable since none of the references even teaches or suggests the use of a selective control valve in conjunction with an uplift pipe for conveying a fermenting liquid from the bottom of the main vat to the upper vat. Even though Kalina broadly teaches the injection of oxygen into fermenting must in a single vat there is absolutely no disclosure in either reference which would lead one skilled in the art to provide the uplift pipe with injector means for injecting oxygen containing gas into the liquid prior to selective valve means for directing the liquid into the upper vat or into the main vat. These features only appear in the present application and no logical combination of these references could possibly arrive at such a structure. Therefore, it is submitted that Claims 1, 4 and 5 would not be the least bit obvious in view of the combination of the Francia patent and the Kalina patent. Therefore, it is submitted that Claims 1, 4 and 5 are allowable. Since all of the other remaining claims are dependent from Claim 1 they would also be considered allowable. Therefore, it is respectfully requested that Claims 1-6 inclusive be allowed and the application passed to issue forthwith.

If for any reason the Examiner is unable to allow the application on the next Office Action and feels that an interview would be helpful to resolve any remaining issue, the Examiner

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is respectfully requested to contact the undersigned attorney for the purpose of arranging such an interview.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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